

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

GENERAL DRIVERS AND)
HELPERS UNION, LOCAL NO. 554,)
Affiliated with the International)
Brotherhood of Teamsters,)
Plaintiff,)
V.)
ROBERTS DAIRY COMPANY,)
LLC, a limited liability company)
organized in the State of Illinois,)
Defendant.)

This matter is before the Court on Plaintiff's Motion for Sanctions ([filing 64](#)) and Plaintiff's Amended Motion for Sanctions ([filing 67](#)). Plaintiff's Motions will be denied.

BACKGROUND

On February 25, 2013, Plaintiff filed a motion to compel answers to Interrogatory Nos. 13, 14, and 15 of Plaintiff's January 22, 2013 Interrogatories. ([Filing 59](#).) On March 18, 2013, the Court entered an order requiring Defendant to serve responses to these Interrogatories within thirty days, or by April 17, 2013. ([Filing 63](#).)

Plaintiff filed its Motion for Sanctions ([filing 64](#)) on April 22, 2013, advising the Court that Defendant had not provided responses to the Interrogatories as previously ordered. On May 6, 2013, Plaintiff filed its Amended Motion for Sanctions ([filing 67](#)) informing the Court that Plaintiff received responses to Interrogatories 13 and 14 on or about April 23, 2013, but did not receive a full and complete response to Interrogatory 15 on that date. Defendant's response to Interrogatory 15 provides that "Sales volume varies over time for a number of reasons. [Defendant] is conducting an investigation to determine the precise level of increase or decrease . . . Defendant is searching for . . . business records and will

produce records from which an answer to this interrogatory may be obtained.” ([Filing 67-1](#).)

DISCUSSION

Plaintiff has requested the imposition of sanctions under Fed. R. Civ. P. 37. Rule 37 authorizes the Court to enter sanctions against a party who fails to comply with a discovery order. Considering the circumstances here, the Court finds that Defendant’s failure to provide responses to Plaintiff’s Interrogatories in a timely manner does not warrant the imposition of sanctions. Although the Court does not condone Defendant’s tardiness, the responses were less than a week late and the late responses do not prejudice Plaintiff’s case. A planning conference is set for June 7, 2013, and a final progression order has not been entered.

Although sanctions will not be imposed, the Court will order Defendant to produce, no later than May 24, 2013, the documents referenced in Defendant’s response to Interrogatory 15. If the documents cannot be produced by May 24, Defendant shall request leave to extend this deadline and, in doing so, show cause why the documents cannot be produced by the set date. Defendant’s failure to comply with this Order will result in the Court revisiting the issue of sanctions.

IT IS ORDERED that Plaintiff’s Motion for Sanctions ([filing 64](#)) and Plaintiff’s Amended Motion for Sanctions ([filing 67](#)) are denied. Defendant shall produce the documents referenced in its response to Interrogatory 15 as set forth above.

DATED May 13, 2013.

BY THE COURT:

S/ F.A. Gossett
United States Magistrate Judge